

CULPEPPER IP, LLC
Kerry S. Culpepper, Bar No. 9837
75-170 Hualalai Road, Suite B204
Kailua-Kona, Hawai'i 96740
Telephone: (808) 464-4047
Facsimile: (202) 204-5181
E-Mail: kculpepper@culpepperip.com
Attorney for Plaintiff Steven Lamont Markos

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STEVEN LAMONT MARKOS)	Case No.: 1:22-cv-216
)	(Copyright)
Plaintiff,)	
vs.)	COMPLAINT; JURY DEMAND;
)	EXHIBITS "1" – "3"
WAIKIKI ADVENTURES, LLC)	
)	
Defendant,)	
)	
)	
)	
)	

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff STEVEN LAMONT MARKOS by and through his undersigned
counsel, brings this Complaint against Defendant WAIKIKI ADVENTURES, LLC
for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff STEVEN LAMONT MARKOS (“Markos”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Markos' original copyrighted Work of authorship.

2. Markos owns and operates the website, National Park Planner, www.npplan.com. Markos started National Park Planner in 2014 to bring to the public first-hand coverage of the over 400 National Parks that make up America’s National Park System, including summaries of the park’s amenities and professional photographs of the terrain.

3. Defendant WAIKIKI ADVENTURES, LLC (“Waikiki Adventures”) is a destination tour selling company located in Hawaii. Waikiki Adventures sells tours for Hawaii, Las Vegas, Nevada, California, Florida and New York. Tours include airplane, bike, boat, fishing, foodie, canoe, helicopter, hiking, horseback, kayaking, scuba diving, Segway, snorkeling, island, volcano, and many more, as well as surfing lessons, vehicle rentals, and yoga. At all times relevant herein, Waikiki Adventures owned and operated the internet website located at the URL www.flaadventures.com (the “Website”), which is now defunct and newly located at the URL www.floridarick.com.

4. Markos alleges that Waikiki Adventures copied Markos' copyrighted Work from the internet in order to advertise, market and promote its business

activities. Waikiki Adventures committed the violations alleged in connection with Waikiki Adventures' business for purposes of advertising and promoting sales to the public in the course and scope of the Waikiki Adventures' business.

JURISDICTION AND VENUE

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendant is subject to personal jurisdiction in Hawaii.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

9. Waikiki Adventures, LLC is a Hawaii Corporation, with its principal place of business at 1108 Keeaumoku Street, Suite 200, Honolulu, HI 96814, and can be served by serving its Registered Agent, Clifton J. Santiago, at the same address.

THE COPYRIGHTED WORK AT ISSUE

10. In 2015, Markos created the photograph entitled "Big-Cypress-129", which is shown below and referred to herein as the "Work".



11. At the time Markos created the Work, Markos applied copyright management information to the Work consisting of the words “© Steven L. Markos” to the bottom right corner.

12. Markos registered the Work with the Register of Copyrights on November 3, 2016 and was assigned the registration number VA 2-022-928. The Certificate of Registration is attached hereto as Exhibit 1.

13. Markos' Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

14. At all relevant times Markos was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANT

15. Waikiki Adventures has never been licensed to use the Work at issue in this action for any purpose.

16. On a date after the Work at issue in this action was created, but prior to the filing of this action, Waikiki Adventures copied the Work.

17. On or about July 20, 2021, Markos discovered the unauthorized use of his Work on the Website as the feature image for its “Turner River to Chokoloskee Kayak Tour” tour.

18. Waikiki Adventures copied Markos' copyrighted Work without Markos' permission.

19. After Waikiki Adventures copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its destination tour company.

20. Waikiki Adventures copied and distributed Markos' copyrighted Work in connection with Waikiki Adventures' business for purposes of advertising and promoting Waikiki Adventures' business, and in the course and scope of advertising and selling products and services.

21. Markos' Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

22. Waikiki Adventures committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.

23. Markos never gave Waikiki Adventures permission or authority to copy, distribute or display the Work at issue in this case.

24. Markos notified Waikiki Adventures of the allegations set forth herein on January 24, 2022 and February 10, 2022. To date, Parties have failed to resolve this matter. Copies of the Notices to Waikiki Adventures are attached hereto as Exhibit 3.

25. When Waikiki Adventures copied and displayed the Work at issue in this case, Waikiki Adventures removed Markos' copyright management information from the Work.

26. Markos never gave Waikiki Adventures permission or authority to remove copyright management information from the Work at issue in this case.

COUNT I COPYRIGHT INFRINGEMENT

27. Markos incorporates the allegations of paragraphs 1 through 26 of this Complaint as if fully set forth herein.

28. Markos owns a valid copyright in the Work at issue in this case.

29. Markos registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

30. Waikiki Adventures copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Markos' authorization in violation of 17 U.S.C. § 501.

31. Waikiki Adventures performed the acts alleged in the course and scope of its business activities.

32. Waikiki Adventures's acts were willful.

33. Markos has been damaged.

34. The harm caused to Markos has been irreparable.

COUNT II
REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION

35. Markos incorporates the allegations of paragraphs 1 through 26 of this Complaint as if fully set forth herein.

36. The Work at issue in this case contains copyright management information ("CMI").

37. Waikiki Adventures knowingly and with the intent to enable or facilitate copyright infringement, removed CMI from the Work at issue in this action in violation of 17 U.S.C. § 1202(b).

38. Waikiki Adventures committed these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of Markos' rights in the Work at issue in this action protected under the Copyright Act.

39. Waikiki Adventures caused, directed and authorized others commit these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of Markos' rights in the Work at issue in this action protected under the Copyright Act.

40. Markos has been damaged.

41. The harm caused to Markos has been irreparable.

WHEREFORE, the Plaintiff Steven LaMont Markos prays for judgment against the Defendant Waikiki Adventures, LLC that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501, 1203;

b. Defendant be required to pay Plaintiff his actual damages and Waikiki Adventures' profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. §§ 504, 1203;

c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Plaintiff be awarded pre- and post-judgment interest; and

e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: Kailua-Kona, Hawaii, May 11, 2022.

CULPEPPER IP, LLC

/s/ Kerry S. Culpepper

Kerry S. Culpepper

Counsel for Plaintiff Steven Lamont Markos